HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No. 16729 of 1996

Between:

Ch. Dhananjay Kumar Singh

… Petitioner

And

The Inspector General of Police,
Southern Sector CRPF,
Hyderabad & another

… Respondents

:: O R D E R ::

Counsel for the petitioner : Shri B.V.Bakshi
Counsel for respondent No.1 : Shri M. Ganga Rao

June 13, 2007

In exercise of the power vested in it under Article 226 of the Constitution of India, the High Court can review the disciplinary action taken by the employer against the delinquent employee if it is established that the impugned action is violative of any statutory provision or the rules of natural justice and such violation has caused prejudice to the delinquent. The Court can also interfere with the finding of guilty recorded by the enquiring/disciplinary authority, if it is

shown to be perverse or the punishment imposed by the employer is found to be shockingly disproportionate or wholly arbitrary. However, the Court cannot exercise appellate jurisdiction and review the action of the employer simply because on a re-assessment or re-appreciation of evidence, a different view can be taken. If the finding recorded in the departmental enquiry is based on legally admissible evidence, then the High Court cannot interfere with the final order by going into the adequacy or sufficiency of the evidence produced during the enquiry.

In **State of Orissa v. Bidyabhushan Mohapatra**[1], the Supreme Court considered whether the High Court can interfere with the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, their Lordships of the Supreme Court observed:

> "But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for

which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao**[2], the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan Mohapatra** (supra) and held:

> "The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding ... under

Article 226 of the Constitution."

In **State of Madras v. G. Sundaram**[3], the Constitution Bench of the Supreme Court laid down the following proposition:

> "High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao**[4], a three Judges Bench of the Supreme Court referred to the judgments of **Bidyabhushan Mohapatra** (supra) and **Niranjan Singh** (supra) and observed:

> "In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material

evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."

In **B.C. Chaturvedi v. Union of India**[5], the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry

or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case.

In **Apparel Export Promotion Council v. A.K. Chopra**[6], the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:

"It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on *no evidence* or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is *not* concerned with the *correctness* of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to

the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

I have prefaced disposal of this petition by making note of the general proposition of law and some judicial precedents because after perusing the record of the case and hearing learned counsel for the parties, I am convinced that the penalty of dismissal imposed on the petitioner by Deputy Inspector General of Police, CRPF, Hyderabad (hereinafter referred to as ' the disciplinary authority') and the appellate order passed by Inspector General of Police, Southern Sector, CRPF, Hyderabad (respondent No.1 herein) are vitiated by an error of law apparent on the face of the record and are liable to be quashed on that ground.

The petitioner joined as a cadet in Central Reserve Police Force (for short, 'the CRPF') on 23.03.1998. In 1994, a departmental enquiry was instituted against him under Rule 27 of the Central Reverse Police Force Rules, 1955 on the following charge:

" No.880904156 Ct.D.K. Singh of F/12 Bn. CRPF while functioning as a member of the Force committed an act of misconduct in discharge of his duties in his capacity as a member of the Force, under Section 11(1) of CRPF Act, 1949 in that on5/4/94 he had made an assault on No.800120166 L/NK/Nagendra Kumar Singh, who was on camp security duty from 2000 hrs to 2200 hrs. No.880904156 Ct. D.K. Singh at about2045 hrs. went out of his charpoy and hit L/NK/ Nagendra Kumar Singh with his SLR butt on face causing injury to nose and also hit on chest as a result of which L/NK Nagendra Kumar Singh felt unconscious with his nose profusely

bleeding. He later went into the barrack and loaded his Rifle with 20 rds and stood there which is prejudicial to good order and discipline of theforce."

Shri V.S. Sahi, Deputy Commandant,12 BN, CRPF, who conducted the enquiry, recorded the statements of Head Constable Shri R.R.Singh, Constable Shri V.V. Singh, Shri NK Darshan Rai, Head Constable Shri Yousuf Ali and submitted report with the conclusion that the charge levelled against the petitioner is proved. The disciplinary authority accepted the enquiry report and passed order dated 03.02.1995, whereby he dismissed the petitioner from service. The appeal preferred by the petitioner was dismissed by respondent No.1 vide his order dated 22.02.1996.

Shri B.V. Bakshi, learned counsel for the petitioner assailed the impugned orders mainly on the grounds that the finding of guilty recorded by the enquiry officer is based on no evidence; that the report of the secret enquiry conducted by Head Constable Shri Yousuf Ali on which reliance was placed by the enquiry officer was not tendered in evidence and that he did not get opportunity to controvert the finding contained therein and cross-examine Shri Yousuf Ali with reference to the so-called secret enquiry. Shri B.V. Bakshi further argued that failure of the department to examine the person allegedly injured by the petitioner should have been treated by the inquiring and the disciplinary authorities as sufficient for exonerating the petitioner.

Shri M. Ganga Rao, learned counsel for respondent No.1 defended the action taken against the petitioner and argued that even though the injured, namely, Constable N.K. Singh had not been examined before the enquiry officer, this omission should not be treated as fatal to the finding recorded by the enquiry officer on the basis of evidence produced during the enquiry. Learned counsel emphasized that even though none of the persons examined during the enquiry had witnessed the incident, their testimony could be relied because Shri N.K. Singh had categorically informed Head Constable Shri Yousuf Ali that he had been hit on nose and chest by the

delinquent employee.

I have considered the respective submissions and carefully scrutinized the records. Ordinarily, this Court is extremely loath to re-evaluate and re-appreciate the evidence recorded by the enquiry officer and the finding recorded by him, but having critically examined the statements of the witnesses produced by the department, I am convinced that the finding of guilty recorded by the enquiry officer is perverse inasmuch as it is not based on any legally admissible evidence. In their statements, Sarva Shri R.R. Singh, V.V. Singh, Darshan Rai merely stated that they had heard the petitioner and Shri N.K. Singh passing filthy remarks on each other. In their cross-examination, all the witnesses unanimously stated that the petitioner was not found standing with the weapon; that no one was present outside the barrack at the time of alleged incident; that none of them had seen the petitioner inflicting blow on the nose of Shri N.K. Singh and none of them ascertained from Shri N.K. Singh how he got injury on the nose. For the sake of reference, the relevant portions of the statement of one of the departmental witnesses namely Shri R.R. Singh are extracted below:

> " …… Both L/NK N.K. Singh and Ct. D.K. Singh were passing filthy remarks on each other. I tried my best to pacify them and advised both not to pass derogatory remarks on each other, but they did not pay need to my advised.
>
> Q.No.1 On 5.4.1994 night were the light of all the barracks time of incident?
>
> Ans. Sir there was no light on 5.4.94 night.
>
> Q.No.2 What was the general behaviour of Ct. D.K. Singh with other follows?
>
> Ans. His behaviour was quite cordial and cooperative with others.
>
> Q.No.3 Was there any such incident practised by Ct.D.K. Singh before?
>
> Ans. No Sir.
>
> Q.No.4 When you rushed outside the barrack did you

notice seen D.K. Singh hitting on the face of L/NK/ N.K. Singh with his riflebutt.

Ans. No Sir he was standing there without any weapon.

Q.No.5 You are the platoon Hav. 17 Platoon in which both L/NK/N.K. Singh and Ct. D.K. Singh are posted. How are there relation with each other?

Ans. Very friendly.

Q.No.6 At the time of incident who else were present there?

Ans. No Sir none was present out side the barrack at the time of incident.

Q.No.7 Before this incident question was there any arguments took place between L/NK N.K. Singh and Ct. D.K. Singh?

Ans. Yes sir they were passing filthy remarks on each other.

Q.No.8 Being Pl. Hav. Did you try to stop both of them from this?

Ans. Yes sir, but they did not to my advised regular.

Q.No.9 Have you ascertained from L/NK/ N.K. Singh how he got injury on this his nose?

Ans. No sir I did not enquire.

Q.No.10 Anything else you were to say to the E.O.?

Ans. Nothing Sir.

Delinquent Ct. D.K. Singh given full opportunity to cross examine the P.W.1 HC R.R. Singh and the delinquent asked the following question to H.C. R.R. Singh.

Q.No On 5.4.94 night was L/NK/ N.K. Singh under the influence of liquor?

Ans. I do not know sir."

The statement of other two witnesses namely constable Shri C.V. Singh and Nayak Darshan Rai are almost identical. In his statement Head Constable Yousuf Ali stated that when he noticed that blood was oozing from the nose of Shri N.K. Singh and his clothes were soaked with blood, he immediately reported the matter to Inspector Tekchand. Shri Yousuf Ali also stated that Shri N.K. Singh told him that he had been hit by rifle butt on the nose by constable D.K.

Singh. For the sake of reference, the cross-examination of Shri Yousuf Ali is also extracted below:

"Q.No.1 On 5.4.94 night were the lights of all barracks camp on at the time of incident?

Ans. Yes Sir.

Q.No.2 For what duty SLR Butt No.556 was issued to Ct. D.K. Singh?

Ans. He was on quarter guard duty from 5.4.94 to 6.4.94 and was issued with three magzine and sixty rounds.

(I hereby produced the extract of Duty Register dated 5.4.94 (quarter guard) as P-Exhibit-IV).

Q.No.3 Before this incident what was the general behaviour of Ct.D.K. Singh with L/NK N.K. Singh and other fellows?

Ans. His behaviour was quitek cordial and friendly.

Q.No.4 Before this incident in question was there any atteracton provocation from either side.

Ans. Yes, sir they were passing filthy remarks on each other.

Q.No.5 At the time of incident on 5.4.94 night who else were present out side the barrack?

Ans. Beside Ct. D.K. Singh and L/NK N.KI. Singh camp sentary on duty were present outside the barrack.

Q.No.6 On 5.4.94 nights were L/NK N.K. Singh and Ct. D.K. Singh in the state of intoxication?

Ans. No Sir.

Q.No.7 Was there any such incident practised by Ct . D.K. Singh before?

Ans. No Sir.

Q.No.8 Have you ascertained from L/NK N.K. Singh how he got injury on his nose?

Ans. Yes Sir and it was told me by L/NK N.K. Singh that he has hit with rifle butt on his nose by Ct. D.K. Singh.

Q.No.9 There is aregation that out barrack night Ct. D.K. Singh his on the nose L/NK N.K. Singh while he was on patrolling duty with his rifle butt as a result of which L/NK N.K. Singh got severe injury on his nose and laid his on the chest with his rifle butt because of this he fell down unconscious his it itself fall.

Ans. Being a report of this coy. I conducted secret enquiry and it has been conformed that the allegation made against Ct. D.K. Singh is correct.

Q.NO.10 Any who else have want to say toi the enquiry officer?

Ans. Nothing sir."

If the statement of Shri Yousuf Ali is considered in the light of the consistent statement made by the other three witnesses and the fact that copy of the so-called secret enquiry conducted by him had not been produced during the enquiry and the petitioner was not given opportunity to cross-examine that witnesses with reference to the finding recorded in that enquiry, it is impossible for any person of reasonable prudence to record a finding that the petitioner had inflicted blow on the nose of Shri N.K. Singh. The failure of the department to examine Shri N.K. Singh without any tangible reason goes a long way to show that the department had withheld the most vital piece of evidence and thereby deprived the petitioner of the right to elicit the truth.

In the result, the writ petition is allowed. Orders dated 03.02.1995 and 22.02.1996 passed by the disciplinary and appellate authorities are declared illegal and quashed. The petitioner shall be entitled to reinstatement with all consequential benefits.

As a sequel to disposal of the writ petition, W.P.M.P. No. 20557 of 1996 filed by the petitioner for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

13.06.2007
ksld

[1] **AIR 1963 SC 779**

[2] **AIR 1963 SC 1723**

[3] **AIR 1965 SC 1103**

[4] **AIR 1975 SC 2151**

[5] **(1995) 6 SCC 749**

[6] (1999) 1 SCC 759